

Appendix L

Recommendations from Past Reports

In the 2021 report, DCJS included 11 recommendations to improve future CPA analysis. In 2022, three more were added. Below is a list of all 2021 and 2022 recommendation. See the past reports for additional background information on the rationale behind each recommendation.

Recommendation 1: *The percentages and Disparity Indexes (DIs) presented in this preliminary report should not be interpreted to indicate that any individual law enforcement agency is practicing bias-based profiling. Given the limitations noted above, these figures should only be used to identify where the numbers indicate that certain ethnic/racial groups are being disproportionately stopped, which may bear further review to identify why this is occurring and whether any action should be considered to reduce or eliminate it. (2021)*

This is a standing recommendation given the limitations of the CPA's current data fields. In addition, any year-to-year comparison of CPA findings should take into consideration both methodological differences and external factors involved in each year's report.

Recommendation 2: *Collect data on the time of day at which each traffic stop was made and add this data to the CPA database. This data would allow DCJS to analyze traffic stop data by comparing disparities in driver stops made during hours of daylight and nighttime. (2021)*

Including this data field would lend analytical weight to the CPA Report and would serve as a valuable identifier variable to help resolve the issue of record duplicates (see Exclusion Criteria).

Recommendation 3: *Collect data on the race/ethnicity, age, and gender of drivers involved in traffic accidents in each Virginia locality. (It would not be necessary to collect personally identifiable information on the driver, only the demographic data.) How and where this data would be collected and stored would need to be determined, but the data would need to be maintained in a way that would allow DCJS to compare it with traffic stop data for each locality. (2021)*

This data is currently unavailable from either the Virginia Department of Transportation, the Department of Motor Vehicles, or the State Police.

Recommendation 4: *Collect data on searches made for contraband during traffic stops, and the results of the searches, and add this data to the CPA database. (2021)*

Including this data field would lend analytical weight to the CPA Report, allowing for statistical analysis drawn from a known pool of stopped and searched drivers.

Recommendation 5: *Collect data on the residence of drivers involved in traffic stops and add this data to the CPA database. This might be done using data collected from the driver's license. (2021)*

Beginning July 1, 2023, Residency will be a mandatory field required for all stop records.

Recommendation 6: *Collect data on the method by which the traffic stop was initiated, to distinguish stops in which an officer's observation of the driver's race/ethnicity could have played a role from stops in which it would be less likely to play a role. Add this data to the CPA database. (2021)*

DCJS and VSP continue to address the ongoing challenge of clarifying when or whether discretion has a role in "Calls for Service" and "Checkpoint" stops.

Recommendation 7: *Virginia should examine the need to provide resources to smaller law enforcement agencies that had difficulty implementing the CPA data collection and reporting requirements. Assistance could be provided in several ways, such as helping these agencies train staff on reporting requirements and practices and providing them with more effective data collection tools such as a statewide electronic summons application. (2021)*

Currently, no state funds have been disbursed to local law enforcement agencies for Community Policing Act implementation.

Recommendation 8: *Virginia should examine the feasibility of obtaining more accurate data on the race and ethnicity of drivers who are involved in law-enforcement traffic stops. Under the CPA, law-enforcement officers now have two methods for determining the race/ethnicity of a driver: officers must either make their own determination about a driver's race/ethnicity (which may or may not be accurate) or ask for that information in the course of the traffic stop, which could raise constitutional concerns or escalate the perception of conflict in certain situations. Virginia does not collect and store information about a driver's race or ethnicity. (2021)*

While substantiating data on the self-reported race and ethnicity of drivers could be a helpful supplement for analysis, the variable of interest for most research on bias-based profiling is the officer's *perceived* race of the driver as the influential factor in profiling. Therefore, the officer's estimate of a driver's race and ethnicity remains a relevant data element for collection. At the same time, officers should not be put in the position of having to ask drivers to report their race/ethnicity during traffic stops.

Recommendation 9: *Virginia should examine the feasibility of collecting data on the race/ethnicity of the law-enforcement officers making traffic stops and adding it to the CPA database. This would allow DCJS staff to assess whether there are indications that the race/ethnicity of the officer making a stop is related to racial/ethnic disparities in stops. (2021)*

This variable would add analytical strength to the report if added, allowing DCJS to analyze the impact of officer race on stop decisions and racial/ethnic disparities in drivers stopped.

Recommendation 10: *DCJS staff should conduct additional research on methods for calculating driver racial/ethnic disparities for agencies serving towns. Currently, the resident driving-age population data needed to examine stops by these agencies is limited, and DCJS staff should determine if this data, or other suitable data, is available. Similarly, DCJS staff should examine whether it is feasible to reliably assess traffic stop disparities for "other" agencies that do not have stable, defined resident population figures. (2021)*

DCJS has identified a census-derived data source, IPUMS NHGIS, which publishes age and race grouped population estimates at the town level. While IPUMS experienced COVID delays and did not

publish the 2022 release for this dataset in time for incorporation into this year's analysis, DCJS hopes to use the NHGIS estimates as Town agency benchmarks for the 2023 analysis. This data will allow for the report to include disparity indices and other population-based analyses at the Town agency level, similar to the City and County Agency findings currently included.

Recommendation 11: *DCJS staff should continue to work with VSP to determine how data on complaints of excessive use of force can be collected in a manner that allows for an examination of bias-based profiling in use of excessive force cases. (2021)*

The reporting format for use of force complaint data is the same this year as for 2021. DCJS will continue to coordinate with VSP on potential opportunities to update data collection and reporting.

Recommendation 12: *The General Assembly should consider providing more specific definitions on the types of investigatory detentions which require CPA data collection. VSP's Instructions and Technical Specifications Version 5.2 (effective July 1, 2022)¹ includes a section providing clarification on investigatory detentions; however, the addition of pedestrian stops to the collection mandate has introduced many nuanced detention scenarios which are ultimately left up to the interpretive judgement of individual LEAs on whether to report them as Community Policing Act data. (2022)*

Code of Virginia § 52-30.2(C) currently states that officers must collect Community Policing Act data

"Each time a law-enforcement officer or State Police officer stops a driver of a motor vehicle, stops and frisks a person based on reasonable suspicion, or temporarily detains a person during any other investigatory stop."

This broad definition includes many situations which are not relevant to the analysis of discretionary profiling in police encounters. To narrow down situations in which either criminal suspicion or officer discretion are not involved, DCJS proposes that the General Assembly consider amending this section to require the collection of CPA data as follows (or with substantially similar language):

"Each time a law-enforcement officer or State Police officer stops a driver of a motor vehicle, stops and frisks a person based on reasonable suspicion, or temporarily detains a person **on the basis of criminal suspicion during any other investigatory stop not in service of a warrant or other court orders.**"

This change would ensure that Community Policing Act data collection is focused on stops which are relevant to analysis, and that law enforcement agencies are given less of a burden in determining which stops mandate collection.

RECOMMENDATION 13: *Consider amending Community Policing Act legislation to change the report deadline to November 1. (2022)*

This report is currently due to the General Assembly on July 1 of each year so the date range of Community Policing Act data used for analysis cannot span the full current fiscal year. With an additional three months to process and analyze more recent data, the report could cover the full 12 months of each preceding fiscal year, including any seasonal trends from April through June currently missing from the report's data.

¹ Available at:

<https://vsp.virginia.gov/wp-content/uploads/2022/01/CommunityPolicingDataInstructionsTechnicalSpecificationsv5.2.pdf>

RECOMMENDATION 14: *DCJS should continue to research additional sources of information and analytic approaches to help determine whether any observed disparities between different racial/ethnic groups in traffic stops are due to bias-based policing or they are due to other factors that could lead to disproportionate numbers of stops for minority drivers. One such factor that DCJS should attempt to examine is whether there are differences in the proportion of successful legal challenges made to traffic stops, searches, and arrests for minority and non-minority drivers. (2022)*

DCJS continues to look for data sources to assist in its examination of traffic stops and pedestrian stops in Virginia, and the role of race and ethnicity in these stops.